

The SCPSC also has verified that BellSouth's Statement meets or exceeds every requirement of the Act's competitive checklist and that the Statement's offerings are not mere paper promises, but rather are demonstrably ready and waiting for CLECs who choose to place orders. Compliance Order at 29-59. These local competition issues are at the core of the SCPSC's established expertise and the state commissions' continuing jurisdiction over such matters was confirmed by the 1996 Act. See Iowa Utils. Bd., 1997 U.S. App. LEXIS 18183. This Commission, moreover, is required to consult with the SCPSC "to verify" BellSouth's satisfaction of the checklist, further driving home that the SCPSC's determinations are entitled to great weight. 47 U.S.C. § 271(d)(2)(B).¹³

The Statement legally requires BellSouth to provide all fourteen checklist items and BellSouth stands ready to furnish each item in the quantities that competitors may reasonably demand and at a level of quality that enables competitors to provide service on par with

¹³ See supra n.10. There is no conflict between the statute's requirement of consultation with the state commission to verify checklist compliance and the additional requirement of consultation with the Attorney General. See 47 U.S.C. § 271(d)(2)(A). Unlike the state commissions, the U.S. Department of Justice has no special expertise on checklist issues and chose not to be a participant in state-level evidentiary proceedings. Accordingly, the Department of Justice's views would be entitled to less weight than the SCPSC's even if one did not consider the legislative history of the Act. When that legislative history is considered, it shows that Congress intended to limit the Attorney General's consultative role to antitrust issues under the public interest test. See, e.g., 142 Cong. Rec. H1176 (daily ed. Feb. 1, 1996) (statement of Rep. Jackson-Lee) ("substantial weight" to be accorded to the views of the Attorney General is limited to her "expertise in antitrust matters"); id. at H1178 (statement of Rep. Sensenbrenner) ("FCC's reliance on the Justice Department is limited to antitrust related matters"); see also id. at H1157 (statement of Sen. Hyde) ("the Department of Justice will apply any antitrust standard it considers appropriate").

BellSouth's. See Michigan Order ¶ 110.¹⁴ Moreover, through actual commercial usage in South Carolina and its other in-region States as well as thorough testing, BellSouth has accumulated extensive evidence regarding its ability to furnish these items in compliance with the Act. The empirical evidence accumulated by BellSouth and provided with this application confirms that all checklist items are available today on a nondiscriminatory basis that enables CLECs to provide the same quality telecommunications services as BellSouth.

Consistent with the recommendations of this Commission and the Department of Justice, moreover, BellSouth has established performance measurements that will allow regulators and private parties to confirm BellSouth's continued compliance with the checklist after interLATA relief has been granted. See generally Stacy Performance Aff. (App. A at Tab 13). BellSouth also has established specific provisioning targets for many unbundled network elements ("UNEs"), which offer competitors a further guarantee of nondiscriminatory access. See Stacy Performance Aff. ¶ 36 & Ex. WNS-7.

¹⁴ The relevant inquiry under Track B is whether BellSouth "generally offer[s]" the relevant items. 47 U.S.C. § 271(d)(3)(A)(ii). To address that issue, Exhibit AJV-3 to the Varner Affidavit cross-references each checklist item with the Statement's provisions. If BellSouth also (or alternatively) qualifies under Track A, the first checklist inquiry under the Commission's decisions is whether BellSouth has "a concrete and specific legal obligation to furnish" Track A competitor(s) the checklist items upon request. Michigan Order ¶ 110. In addition to the specific terms of BellSouth's agreements, that obligation is satisfied by the Statement itself insofar as CLECs with existing interconnection agreements can avail themselves of the Statement as an alternative to the terms of their agreements. See Compliance Order at 25 (BOC may use Statement to supplement interconnection agreements under Track A). See also, e.g., ACSI Agreement § XXII (giving ACSI access to terms of any SCPSC interconnection order) (App. B at Tab 9); DeltaCom Agreement § XXII(C) (giving ITC DeltaCom access to terms of any SCPSC interconnection order) (App. B at Tab 27).

There are a few areas in which BellSouth disagrees with the interpretations of checklist requirements suggested in the Commission's Michigan Order, particularly regarding pricing, combinations of unbundled network elements, and certain OSS performance measurements and standards. BellSouth and other parties have properly presented these issues to the Courts and the Commission;¹⁵ in this application BellSouth preserves its positions for resolution by the courts if necessary.¹⁶ No one who fully reviews this application, however, could genuinely question BellSouth's good-faith commitment to satisfying the local-market requirements of the checklist and the 1996 Act. BellSouth thus believes not only that the Commission should change its

¹⁵ The Eighth Circuit has pending before it petitions arguing that because pricing matters are reserved to the States under section 252, and the checklist simply requires compliance with section 252's pricing rules, the checklist does not authorize the Commission to condition BOC interLATA entry upon compliance with federal pricing rules. See Petition of the State Commission Parties and the National Association of Regulatory Utility Commissioners for Issuance and Enforcement of the Mandate (filed Sept. 17, 1997) & Petition for Immediate Issuance and Enforcement of the Mandate (filed Sept. 18, 1997), Iowa Utils. Bd. v. FCC, No. 96-3321 (8th Cir.). The Commission's policies regarding combinations of unbundled network elements — discussed in paragraphs 160 and 336 of the Michigan Order — are the subject of a petition for rehearing before the Eighth Circuit, Petition for Rehearing, Iowa Utils. Bd. v. FCC, No. 96-3321 (8th Cir. filed Aug. 29, 1997), and also are at issue in another appeal in the same court. Petition for Review, Southwestern Bell Tel. Co. v. FCC, No. 97-3389 (8th Cir. filed Sept. 5, 1997). In addition, BellSouth has petitioned the Commission to reconsider and clarify portions of the Michigan Order, including those dealing with OSS performance measurements and standards and evidentiary matters. Petition of BellSouth Corporation for Reconsideration and Clarification, Application of Ameritech Michigan Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137 (FCC filed Sept. 18, 1997).

¹⁶ BellSouth recognizes that the Commission has no power now to grant relief on BellSouth's belief that section 271, along with other provisions of the 1996 Act that single out and impose burdens on the BOCs by name, constitutes an unconstitutional bill of attainder and also violates both separation of powers and equal protection principles. Accordingly, BellSouth hereby preserves these arguments for future review in the Courts.

position on the disputed legal issues, but also that the Commission should look beyond these narrow disagreements about the meaning of the legislation to the broad effort BellSouth is making to accommodate competitive entry by CLECs. This effort, which BellSouth believes amply satisfies the requirements for in-region, interLATA relief, is detailed below.

A. BellSouth is Providing Nondiscriminatory Access to its Operations Support Systems

In its Michigan Order this Commission emphasized nondiscriminatory access to operations support systems (“OSSs”) as a critical aspect of the checklist requirements. Michigan Order ¶¶ 128-221. After exhaustive and very expensive efforts to implement, test, and make commercially available new and improved interfaces and OSSs, see generally Stacy OSS Aff., and to establish and staff new organizations, centers, and procedures for the benefit of CLECs, see Stacy Performance Aff. ¶¶ 4-11, BellSouth is able to ensure CLECs the required access. BellSouth is not stopping there, however. As the affidavits cited below explain, BellSouth is continuing to enhance its systems, which already meet the Act’s requirements, so that CLECs will have even better access to OSSs. Although not necessary to this application, that fact should give the Commission additional confidence in BellSouth’s commitment to facilitate local market entry.

CLECs are able to perform traditional OSS functions such as pre-ordering, ordering, provisioning, maintenance and repair, and billing “in substantially the same time and manner” as BellSouth. First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, 15764, ¶ 518 (“Local Interconnection Order”), modified on recon., 11 FCC Rcd 13042 (1996), vacated in part, Iowa Utils. Bd. v. FCC,

No. 96-3321, 1997 U.S. App. LEXIS 18183 (8th Cir. July 18, 1997). As demonstrated in a videotape provided as part of Appendix D (at Tab 7) to this application, BellSouth has modified its OSSs to process CLEC transaction requests and has developed interfaces that allow CLECs to obtain access to resale services and unbundled elements at parity with BellSouth. With these modifications now in place, CLECs may obtain pre-ordering information, prepare and enter orders, receive provisioning information, enter and track the receipt and status of trouble reports, and bill customers accurately, in substantially the same manner as BellSouth.

To cater to the differing needs of various CLECs, BellSouth has provided a choice of manual or electronic OSS interfaces. Electronic interfaces currently are available for every aspect of OSS access: pre-ordering functions; ordering and provisioning; maintenance and repair; submitting and checking the status of trouble reports for either resold services or UNEs; and obtaining billing information. BellSouth's electronic interfaces meet existing industry standards; as new industry standards are developed, BellSouth will implement them, too. See Stacy OSS Aff. ¶ 6. In addition, BellSouth has provided CLECs with all information (such as user guides and ordering codes) necessary to enable quick processing of CLEC requests, as well as the training they may need to use BellSouth's systems effectively. Stacy OSS Aff. ¶¶ 135-141 & Exs. WNS-48-51.

Whatever interface(s) a CLEC chooses, BellSouth will provide substantially the same type of functionality at substantially the same level of performance that BellSouth provides to itself. The SCPSC has found as much. Adopting the standard established by the FCC, it concluded that BellSouth's "electronic interfaces provide access to [BellSouth's] operational

support systems . . . that is substantially the same as, and in many cases better than, that which [BellSouth] provides to personnel supporting [BellSouth's] retail customers." Compliance Order at 33.

Nor can there be any argument that the access BellSouth provides is not commercially viable. All of BellSouth's OSS interfaces have been subjected to extensive internal testing. See Stacy OSS Aff. ¶¶ 117-134. For example, BellSouth has conducted tests of its combined electronic interfaces to establish a minimum capacity of 5,000 total requests per day, and the interfaces have sufficient excess capacity to handle double that volume in BellSouth's nine-state region. Stacy OSS Aff. ¶ 119-121. CLECs are successfully using BellSouth's electronic interfaces to submit orders for resale services and UNEs and to enter trouble reports. Almost 1700 trouble reports have been processed through the maintenance and repair interface and BellSouth received more than 10,000 electronic orders for resale services in August alone. Stacy OSS Aff. ¶ 125, 128 & Ex. WNS-46. BellSouth's systems are easily expandable to meet any reasonably foreseeable demand by CLECs without discriminatory delays. Stacy OSS Aff. ¶¶ 119-134.

There will be those who say that even BellSouth's extraordinary efforts to accommodate competitors are inadequate, and that the sufficiency of BellSouth's OSSs can only be shown by processing larger numbers of actual orders from CLECs. In allowing Bell companies to satisfy the checklist by offering interconnection and network access pursuant to a statement of terms and conditions, 47 U.S.C. § 271(c)(2)(A)(i)(II), however, Congress necessarily rejected the notion that the availability of local facilities and services can only be shown by furnishing them to

competitors at some minimum volume. The checklist does not allow this Commission to delay long distance competition until CLECs decide to come and get BellSouth's offerings.

Pre-ordering. To access OSSs containing pre-ordering information, CLECs can select a manual or electronic interface. The electronic interface — known as the Local Exchange Navigation System (“LENS”) — is an interactive system that allows the CLEC direct, real-time access to BellSouth's pre-ordering OSSs. Stacy OSS Aff. ¶¶ 7-12. LENS is compatible with inexpensive, commercially available hardware and software and requires no additional development effort by the CLEC, yet can be customized by the CLEC to whatever extent the CLEC chooses. Id. ¶ 10. To accommodate CLECs of differing sizes and needs, LENS is accessible through direct (LAN-to-LAN) connections, dial-up access, or public Internet access. Id. LENS enables a CLEC to satisfy a customer's needs for pre-ordering information during a single telephone call with the customer, without any assistance or intervention from BellSouth personnel. Stacy OSS Aff. ¶ 12.

For manual pre-ordering, which “smaller competing carriers [may] prefer,” Michigan Order at ¶ 137 & n.333, the CLEC simply passes on pre-ordering information requests to one of BellSouth's two (redundant) Local Carrier Service Centers (“LCSCs”) via facsimile, telephone, or mail. See Stacy Performance Aff. ¶ 4 (discussing LCSCs).

Using either of these interfaces, CLECs may gather and verify street address information, telephone number availability, service and feature availability, due date information, and customer service record information. Stacy OSS Aff. ¶¶ 13-41. For instance, if a CLEC initiates an address verification query through LENS, the LENS server will query the appropriate

BellSouth database and verify the address on a real-time basis. Id. ¶¶ 16, 20. A CLEC can use LENS to select and reserve telephone numbers (including vanity numbers) on a real-time basis while the CLEC's customer is on the line. Id. ¶¶ 23-24. LENS also may be used to validate what features are available to particular end-user customers, either by entering a ten-digit telephone number or a street address. Id. ¶ 26.

Additionally, LENS allows CLECs to obtain due date information for installations requiring a premises visit, based on field personnel availability and technical factors such as switch cut-overs. Id. ¶ 32.¹⁷ Authorized CLECs likewise may access customer service records on a real-time basis through the LENS interface. Id. ¶ 38. Not all pre-ordering functions are applicable to unbundled network elements. However, where a particular function is applicable, such as assigning a telephone number for an unbundled port, BellSouth's pre-ordering interface can be used for unbundled network elements as well as resold exchange services. Id. ¶ 48.

For the convenience of CLECs, BellSouth has made the single LENS system available for both business and residential pre-ordering, even though BellSouth's own personnel currently must use different systems to serve these two groups. Id. ¶ 12.¹⁸ LENS, in addition, is more user-friendly than some of the systems used by BellSouth's own service representatives, for it

¹⁷ Business rules for other due-date intervals have been provided to CLECs. Stacy OSS Aff. ¶ 35.

¹⁸ Certain complex services that require extensive design work and are ordered in relatively low volumes, such as SONET rings, may only be pre-ordered and ordered through a paper process. This is true for BellSouth and CLECs alike. Stacy OSS Aff. ¶¶ 63-73. The service inquiry and any subsequent service requests are handled without distinguishing between orders generated by BellSouth and orders generated by a CLEC. Id. ¶ 66. The processes employed by BellSouth for these services thus afford CLECs and their customers the same level of timely service as BellSouth and its retail customers receive. See id. ¶¶ 63-73.

relies exclusively on graphics and English-text prompts rather than code and function keys. Id. ¶¶ 8, 12.

In an effort to make LENS even more useful to larger CLECs, BellSouth has provided to interested CLECs a LENS interface specification that provides data for direct integration into a CLEC's systems. This allows the CLEC to use its own systems to obtain and manipulate the data provided by LENS. Stacy OSS Aff. ¶ 44. Over and above the nondiscriminatory access provided by LENS and required under the Act, moreover, BellSouth makes available machine-to-machine interfaces for access to pre-ordering OSSs that are tailored to individual CLECs' requirements. Id. ¶¶ 42-45. For instance, even though it is not required to do so to meet its duty of nondiscriminatory access under the Act, BellSouth is developing a customized machine-to-machine interface ("EC-LITE") that meets AT&T's particular specifications. BellSouth expects to deploy this interface in December 1997. Id. ¶ 42.

As described in the attached Stacy OSS Affidavit, tests and actual usage demonstrate that LENS is comparable in speed to the interfaces through which BellSouth's customer service representatives access the same systems. Id. ¶¶ 6, 9, 20, 31. BellSouth's central OSS databases thereafter treat all queries alike, whether they originate with a CLEC or a BellSouth service representative. Id. ¶¶ 16, 24, 28, 34 & Ex. WNS-37. "[E]mpirical data" thus demonstrates that BellSouth is "providing nondiscriminatory access to all [pre-ordering] OSS functions, as required by the Act." Michigan Order at ¶ 128.

Ordering and Provisioning. Ordering and provisioning are the processes whereby a CLEC requests resold services, UNEs, or interconnection trunking from BellSouth and then

receives information such as a confirmation that the order has been accepted. See 47 C.F.R. § 51.5. CLECs may use the Exchange Access Control and Tracking (“EXACT”) system to request interconnection trunking. This is the same industry-standard interface BellSouth uses to process access service requests from interexchange carriers. Stacy OSS Aff. ¶ 55. In addition, a second interface specifically developed for CLECs, Electronic Data Interchange (“EDI”), has been made available to CLECs since December 31, 1996. Currently, five CLECs have an EDI interface in actual use with BellSouth. Id. ¶ 54. EDI allows CLECs to order resold services, simple unbundled network elements such as unbundled loops and ports, interim number portability, and some complex services. Id. ¶¶ 59, 63. BellSouth’s interface meets the industry standards for EDI developed by the Ordering and Billing Forum (a subcommittee of the Association for Telecommunications Industry Solutions), and allows a CLEC to transmit service requests in standard EDI format to BellSouth. Id. ¶ 50. Using the EDI format, for instance, CLECs may specify that a customer be switched “as is” (no features or functions are added or deleted) or “as specified” (specified features or functions are added or deleted). Id. ¶ 58.

CLECs not choosing to use EXACT or EDI have another alternative. Although not an aspect of BellSouth’s provision of nondiscriminatory access under the requirements of the Act, CLECs may submit service requests for most non-complex services through LENS. Id. ¶ 56. In addition, if a CLEC chooses not to use an electronic interface, it may request services or UNEs using a manual process. Stacy Performance Aff. ¶ 8.

Whether a CLEC submits an order through EDI or LENS, the request is screened for formatting errors and the complete and correct service request is then transferred to the same

BellSouth, September 30, 1997, South Carolina

service order control system used for BellSouth's own retail orders. This database automatically delivers service order records to the downstream OSSs that select and assign facilities and cross-connect wiring functions. There is no distinction between CLEC- and BellSouth-originated order records. Instead, orders are scheduled and filled on a first-come, first-served basis. Stacy OSS Aff. ¶¶ 23, 33, 34.

As the SCPSC determined, "these systems are operational and are capable of processing a sufficient number of orders to permit meaningful competition in South Carolina." Compliance Order at 37. The capacity of EDI, for instance, greatly exceeds the current volume of CLEC requests. Id. at 37; see Stacy OSS Aff. ¶ 119 & Ex. WNS-43. All of BellSouth's systems for ordering and provisioning are scalable to meet any reasonably foreseeable demand without discriminatory delays. Id. ¶¶ 119-134.

CLECs' access to BellSouth's ordering functions is substantially the same as the access provided to BellSouth's own retail operations. Mechanized order generation is available on BellSouth's side of the EDI interface for services that collectively represent 90 percent of BellSouth's consumer and small business revenues and 80 percent of total retail operating revenue. Stacy OSS Aff. ¶ 58. Mechanized service generation for unbundled loops, ports, and interim number portability has been tested and is available to CLECs as of October 6, 1997. Id. While there have in the past been problems with rejection of electronic orders placed by CLECs, all problems attributable to BellSouth have been corrected. Id. ¶¶ 111-112.

BellSouth has designed its OSSs in accordance with the Eighth Circuit's conclusion that the text of the Act "cannot be squared" with a requirement that "incumbent LECs, rather than the

requesting carriers, . . . recombine network elements that are purchased by the requesting carrier on an unbundled basis.” Iowa Utils. Bd., 1997 U.S. App. LEXIS 18183, at *81; see Stacy OSS Aff. ¶ 60. To impose under section 271 any requirement that BellSouth must offer UNEs on a pre-combined basis or as a “platform” would contravene the Court of Appeals’ decision and violate section 271(d)(4), which forbids the Commission to expand the requirements of the competitive checklist.

Service Maintenance and Repair. CLECs can use BellSouth’s interactive Trouble Analysis Facilitation Interface (“TAFI”) or a manual interface to initiate maintenance or repair inquiries for services associated with a telephone number. Stacy OSS Aff. ¶¶ 83, 86-95. Thirteen CLECs are presently using TAFI. Id. ¶ 95. For “designed” services (which are associated with a circuit number), BellSouth makes available to CLECs the same TIM1 electronic bonding interface currently used by interexchange carriers for access services and the ability to pass a trouble ticket electronically into the Work Force Administration database using the Exchange Carrier - Common Presentation Manager interface. Id. ¶¶ 82, 96. BellSouth also will develop customized systems such as one now being developed for AT&T based on the TIM1 standard. Id. ¶ 98.

If a CLEC elects to use the manual interface, BellSouth will handle the CLEC’s phoned-in trouble reports in the same way it handles reports from its own retail customers — by entering the report into TAFI. Id. ¶¶ 90, 93. But if the CLEC chooses direct access to TAFI, its personnel are themselves able to input trouble reports, obtain commitment times, and check on the status of previously entered reports. CLEC personnel enter trouble reports by inputting information in

response to TAFI mechanized questions in the same way BellSouth retail service representatives, who use TAFI themselves, would accomplish the same task. Id. ¶ 93. CLECs have access to information on the resale services and UNEs they have purchased from BellSouth, but not to information about the customers of other CLECs. Id. ¶¶ 90-91. Unlike BellSouth retail service representatives, CLECs have the advantage of being able to access TAFI for both business and residential customers through the same interface. Id. ¶ 90.

TAFI automatically performs diagnostic tests and, by interacting with other internal BellSouth systems, is often able to correct a trouble report while the customer is still on the line. For example, if a customer were to report a problem with call waiting, TAFI would first verify that the feature is listed on the customer service record. Then, depending on the nature of the problem, TAFI may be able to restore the service to the line. TAFI will verify, for instance, that the program options in the central office switch are correct. If TAFI finds an error in those options, it will automatically reprogram the switch. Id. ¶ 87. In cases where further action is required, BellSouth will advise the CLEC of the steps being taken and the time they will take, so that the CLEC can inform its own customer. Id. ¶ 90. Thereafter, the CLEC can check the status of a repair order by entering a subsequent report into TAFI or, if it placed the initial order manually, by contacting the BellSouth Residence Repair Center or Business Repair Center with which it placed the initial report. See id. ¶¶ 90-91.

TAFI currently will support 130 simultaneous users with a volume of 2600 trouble reports per hour. Stacy OSS Aff. ¶ 127; see Compliance Order at 39 (“[t]he current capacity far exceeds usage to date and forecasted usage in the immediate future”). BellSouth is able to add

additional capacity almost immediately. Stacy OSS Aff. ¶ 127. As of August 31, 1997, 143 users from 13 CLECs have generated a total of 1690 trouble reports in TAFI. 664 reports were generated in the month of August alone. Usage data and testing confirm that the access provided to CLECs through TAFI is nondiscriminatory. See Stacy OSS Aff. ¶¶ 126-129 & Exs. WNS-33, 39.

Billing. BellSouth bills CLECs using its two billing systems — Carrier Access Billing Systems (“CABS”) and Customer Records Information System (“CRIS”). CABS is a billing system for carriers that measures billable access usage and conforms to industry standards established by the Ordering and Billing Forum. CRIS was developed for billing end users and is used to bill CLECs for resold services: It measures billable call events (e.g., the use of a vertical service that is charged on a per-use basis) and accumulates call record details. Hollett Aff. ¶ 5.

A CLEC receives separate bills from the CRIS and CABS systems, just as a BellSouth end user who subscribes to a service that is recorded in both systems would receive two bills. Stacy OSS Aff. ¶ 101. A variety of billing media formats are available to CLECs for both CRIS and CABS bills, and BellSouth offers a capability for sorting the information provided on CRIS bills. Hollett Aff. ¶ 6. While the separate bills involve different formats, BellSouth has negotiated with some CLECs to provide CRIS data in CABS format and is testing this capability with AT&T and MCI. Id. ¶ 7; see also Stacy OSS Aff. ¶ 102.

BellSouth additionally offers CLECs access, either electronically or using a magnetic tape, to usage-sensitive data in a manner that facilitates end-user billing. Hollett Aff. ¶ 8 (App. A at Tab 6). Twenty-four CLECs in BellSouth’s region are presently using this daily data transfer.

Id. Daily usage information is available for resold lines, interim number portability accounts, and some unbundled network elements such as unbundled ports. Id. This system, the SCPSC determined, provides CLECs “access to the data they need in substantially the same time and manner as BST.” Compliance Order at 39.

Testing and actual usage prove that CLECs are able to receive billing information on a nondiscriminatory basis. See Hollett Aff. ¶¶ 9-18 (discussing measures to ensure adequacy of billing systems for CLECs’ needs); Stacy Performance Aff. Ex. WNS-53. BellSouth has adopted a variety of safeguards to prevent double-billing and other billing errors and has addressed the few issues of this sort that have arisen. Hollett Aff. ¶¶ 9-17.

Performance Measurements. BellSouth has collected extensive data on the real-world performance of its systems for this application. This information, which confirms the nondiscriminatory access provided by BellSouth, is presented in the attached affidavits of William Stacy. See Stacy OSS Aff. ¶¶ 108-134 & Exs. WNS 33, 36-43, 45-48, 53. BellSouth also has committed to provide data that will allow CLECs to confirm their continued receipt of nondiscriminatory access to OSSs in the future. Stacy Performance Aff. ¶¶ 40-43 & Exs. WNS 4-6, 8 (discussing BellSouth’s agreement with AT&T and “permanent” performance measures).

As BellSouth has explained in its petition for reconsideration of the Michigan Order, the Commission may not enforce substantive performance standards for other checklist items under the rubric of access to OSSs. What happens after CLECs’ requests have made it through BellSouth’s support systems is governed not by the Act’s OSS provisions, but rather by the checklist requirements (if any) that address the underlying item ordered. The right of access to

OSSs cannot be extended to overlap or trump those independent checklist requirements — nor vice-versa — for the Act expressly states that “[t]he Commission may not, by rule or otherwise, limit or extend the terms used in the competitive checklist” 47 U.S.C. § 271(d)(4).

However, the performance measurement commitments that BellSouth has made allow the Commission and CLECs to verify that BellSouth is providing nondiscriminatory access to its OSSs. See infra Part II (C) (discussing performance measurements). In that respect, they are just part of a comprehensive effort by BellSouth to ensure CLECs ongoing access to BellSouth’s OSSs that is — at a bare minimum — in full compliance with the Act.

B. All Fourteen Checklist Items Are Legally and Practically Available

OSSs enable CLECs to obtain local network facilities and services the CLECs use in their own services. The checklist requires that fourteen categories of BellSouth facilities and services be made available on a nondiscriminatory basis. 47 U.S.C. § 271(c)(2)(B). As explained below, BellSouth fully satisfies all fourteen requirements by virtue of the legally binding offerings of its Statement and BellSouth’s extensive, successful efforts to make the required items available in practice.

(1) Interconnection. Subsection 271(c)(2)(B)(i) requires BellSouth to hold out interconnection with its network facilities in accordance with the requirements of sections 251(c)(2) and 252(d)(1) of the Communications Act. These two provisions in turn require BellSouth to provide interconnection: (A) “for the transmission and routing of telephone exchange service and exchange access;” (B) “at any technically feasible point;” (C) “that is at

least equal in quality” to what BellSouth provides itself; (D) “on rates, terms and conditions that are just, reasonable, and nondiscriminatory;” and (E) based upon cost plus a “reasonable profit.”

BellSouth’s Statement satisfies sections 251(c)(2) and 252(d)(1) and applicable Commission regulations by offering local interconnection of equal quality, at any technically feasible point, at cost-based rates. Statement § I; Varner Aff. ¶¶ 43-66; Milner Aff. ¶¶ 10-14. The Statement provides interconnection at the line-side or trunk-side of the local switch, as well as at trunk interconnection points for a tandem switch, central office cross-connect points, and out-of-band signal transfer points. Statement § I.A.1. The SCPSC confirmed that interconnection is available at each of these points. Compliance Order at 29. Pursuant to a “Bona Fide Request Process” that was developed jointly with AT&T and is available to all CLECs, BellSouth also will provide local interconnection at any other technically feasible point, including meet-point arrangements. Statement § I.A.2 & Attach. B; Varner ¶¶ 19, 52; Milner Aff. ¶ 10. Interconnection is available through several alternative methods, including virtual and physical collocation and interconnection via purchase of facilities from either company by the other company. Statement § I.C; Varner Aff. ¶ 49.

The SCPSC found that the Statement’s interconnection offerings are actually available to competitors. It noted that “BellSouth had installed approximately 19,360 interconnection trunks from CLECs’ switches to BellSouth’s switches in BellSouth’s nine-state region.” Compliance Order at 30. As of September 1, 1997, that number had risen to more than 28,000 trunks, including 288 trunks in South Carolina. Milner Aff. ¶ 11. The SCPSC also found that “there is no dispute that virtual collocation is available from BellSouth, as evidenced by the five virtual

collocation arrangements in place [in South Carolina] at the time of the hearing and one additional arrangement in progress.” Compliance Order at 32; see Milner Aff. ¶ 26 & Ex. WKM-2 (current list of BellSouth’s virtual collocations). There are 14 physical collocation arrangements in place in BellSouth’s region and 86 in progress, including one in South Carolina. See Milner Aff. ¶ 20 (discussing and providing list of physical collocations). Because BellSouth uses the same processes with respect to checklist items in all of its nine states, this experience within and outside South Carolina confirms the practical availability of interconnection in South Carolina. Milner Aff. ¶ 5.

To demonstrate that the interconnection BellSouth provides competitors is equal in quality to that BellSouth provides itself, BellSouth has furnished with this application: detailed technical service descriptions outlining its local interconnection trunking arrangements and switched local channel interconnection, Milner Aff. ¶¶ 10-11 & Ex. WKM-9; BellSouth’s Collocation Handbook, which establishes standardized procedures for collocation, Milner Aff. ¶ 15; Varner Ex. AJV-4; and blockage rates for trunks that route BellSouth traffic and for trunks that route competitors’ traffic, see Stacy Performance Aff. ¶¶ 23, 55-85. Each of these three bases for comparison confirms that the interconnection BellSouth provides competitors equals what it provides to itself. Milner Aff. ¶ 12; Stacy Performance Aff. ¶¶ 55-85 & Exs. WNS-11-14. In every instance in which a trunk has been blocked, BellSouth has cooperated with competitors to resolve the problem. See Milner Aff. ¶ 14 (describing examples).

The Statement also addresses the rates at which interconnection will be provided. Statement § I.E & Attach. A at 1. The SCPSC approved BellSouth’s “interim” rates for

interconnection as consistent with section 252(d)(1), noting that they match the rates that the SCPSC had previously approved as consistent with the Act in the AT&T/BellSouth Arbitration and are within the now-overturned interim proxy rates that had been established by this Commission. Compliance Order at 29-30; see Varner Aff. ¶¶ 53-62 (discussing rates). The SCPSC explained that nothing in the 1996 Act restricts a state commission's ability to approve rates as consistent with section 252 prior to "final" cost proceedings, that rate-setting necessarily "is an ongoing process," and that the FCC itself has employed an interim rate methodology under section 252. Compliance Order at 54-58. Then, to address concerns that an interim approach might "chill" local competition because of the possibility of an upward adjustment, the SCPSC eliminated that possibility. Id. at 58. While BellSouth must guarantee CLECs a retroactive, downward adjustment to their bills if warranted after cost proceedings, it may not recover any undercharges incorporated into the interim interconnection rates. Id. at 58-59.

CLECs thus are guaranteed that they will pay no more than the final cost-based rate set by the SCPSC. Varner Aff. ¶¶ 31-36. There will be no back-billing for items purchased at the Statement's current rates. Id. This approach, the SCPSC determined, "will actually encourage early entry into the local market because potential competitors will want to take the largest possible advantage of the capped interim rates" pending proceedings to establish replacement rates. Compliance Order at 59.

The SCPSC has issued a comment and hearing schedule governing its cost proceeding, under which hearings are to begin on December 1, 1997 and a decision will be rendered in

January 1998. Varner Aff. ¶ 28. BellSouth's TELRIC-based cost studies have already been made available to the SCPSC. Id. ¶ 29.

The SCPSC's pricing determinations are conclusive. Section 252(d) reserves to the States pricing authority over local interconnection, unbundled access, resale, and transport and termination of traffic. "[T]he FCC has no valid pricing authority over these areas of new localized competition." Iowa Utils. Bd., 1997 U.S. App. LEXIS 18183, at *29. The checklist, in turn, requires only that interconnection pricing comply with the requirements of sections 251(c)(2) and 252(d)(1). 47 U.S.C. § 271(c)(2)(B)(i). This incorporation of the States' rate-setting authority into the checklist does not suggest any transfer of power to the Commission. Indeed, far from issuing an "explici[t] direct[i]on" that the Commission exercise jurisdiction over intrastate rates (as would be necessary to establish federal authority, California v. FCC, No. 96-3519, 1997 U.S. App. LEXIS 22343, at *10 (8th Cir. Aug. 22, 1997)), Congress forbade the Commission from extending the checklist requirement of State-regulated pricing in accordance with section 252. 47 U.S.C. § 271(d)(4). Simply put, "state commission determinations of the just and reasonable rates that incumbent LECs can charge their competitors for interconnection, unbundled access, and resale" are "off limits to the FCC." Iowa Utils. Bd., 1997 U.S. App. LEXIS 18183, at *50.

(2) Access to Network Elements. Subsection 271(c)(2)(B)(ii) requires BellSouth to provide access to UNEs in accordance with the requirements of sections 251(c)(3) and 252(d)(1) of the Communications Act. Sections 251(c)(3) and 252(d)(1) in turn require BellSouth to provide access to unbundled network elements: (A) "at any technically feasible point;" (B) "on

rates, terms and conditions that are just, reasonable, and nondiscriminatory;” and (C) based upon cost plus a “reasonable profit.” In addition, in the Local Interconnection Order, the Commission adopted rules that require BellSouth to make interconnection available for unbundled access to, at a minimum, the following independent network elements: local loops; the network interface device; switching; interoffice transmission facilities; signaling networks and call-related databases; OSS functions; and operator services and directory assistance. 47 C.F.R. § 51.319.

The SCPSC found that BellSouth’s Statement “provides CLECs with nondiscriminatory access to network elements in accordance with the requirements of the Act.” Compliance Order at 40. The Statement provides nondiscriminatory access to all network elements identified in the Commission’s rules on an unbundled basis at any technically feasible point. Statement § II & Attach. C; Varner Aff. ¶¶ 67-80; Milner Aff. ¶¶ 27-29; see also supra Part II(A) (OSS access). Dark fiber also is available in South Carolina on an unbundled basis, Milner ¶ 34, consistent with the technical service description provided as Milner Aff. Ex. WKM-9. Elements not specifically provided for in the Statement are available through the Bona Fide Request Process, where technically feasible. Statement §§ II.A & D & Attach. B.

BellSouth does not impose any limitations, restrictions, or requirements on requests for or use of a UNE that would impair a CLEC’s ability to provide a telecommunications service in the manner it intends. See Statement § II.G (“Network elements may be combined in any manner.”). CLECs obtain exclusive use of an unbundled network facility and may use features, functions, or capabilities, for a set period of time as required by section 51.309(c) of the Commission’s rules.

Varner Aff. ¶ 70. BellSouth retains the obligation to maintain, repair, or replace UNEs, also in compliance with section 51.309(c). Id.; see Statement Attach. C.

BellSouth permits CLECs to recombine UNEs on an end-to-end (or any other) basis, thereby creating the equivalent of one of BellSouth's retail services or a different service of their own. Varner Aff. ¶ 74. To assist CLECs in doing so, BellSouth will perform necessary software modifications and physically deliver UNEs, where reasonably possible, at no extra charge. Id. Additional software modifications are available through the Bona Fide Request Process. Id.

As the U.S. Court of Appeals for the Eighth Circuit has held, however, the Act's language requiring incumbent LECs to provide UNEs "in a manner that allows requesting carriers to combine such elements," 47 U.S.C. § 251(c)(3), "unambiguously indicates that requesting carriers will combine the unbundled elements themselves." Iowa Utils. Bd., 1997 U.S. App. LEXIS 18183, at *82; see also id. ("[W]e do not believe that this language can be read to levy a duty on the incumbent LECs to do the actual combining of elements. . . . [T]he Act does not require the incumbent LECs to do all of the work.") (emphasis in original). Therefore, if a CLEC wishes to obtain an existing retail service from BellSouth on a pre-combined, "switch-as-is" basis, BellSouth will provide this service at the retail rate less the 14.8 percent resale discount set by the SCPSC. Varner Aff. ¶ 75. That percentage stands in contrast to the effective 52 percent discount that CLECs could reap if they were allowed to circumvent the Act's resale rules and State pricing policies by ordering pre-combined UNEs that comprise a finished, end-to-end retail service at the rates that apply to unbundled, uncombined elements. See Varner Aff. ¶ 76. The SCPSC — exercising its exclusive jurisdiction over pricing of both UNEs and resale services —

has confirmed the consistency of this practice with the requirements of the 1996 Act. See AT&T Arbitration Order at 10 (Mar. 10, 1997); Varner Aff. ¶ 79.

The Statement's rates for network elements purchased on an unbundled basis also have been approved by the SCPSC. The SCPSC held that the rates are "cost-based within the requirements of the 1996 Act." Compliance Order at 55; see also Varner Aff. ¶¶ 25-40; see Statement Attach. A at 1 & Attach G.¹⁹ In so doing, it explained that "[i]f rates are subsequently modified by [the SCPSC] in a later proceeding, payments by CLECs will be adjusted retroactively to the new rates" if the new rates are lower; again, this ensures CLECs rates that will be no higher than the rates set by the SCPSC after its cost proceeding. Compliance Order at 53-54, 68. As discussed above, the SCPSC's conclusions on pricing are definitive.

(3) Nondiscriminatory Access to Poles, Ducts, Conduits and Rights-of-Way. Section 271(c)(2)(B)(iii) directs BellSouth to provide nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by it at just and reasonable rates in accordance with the requirements of section 224.

BellSouth's Statement provides such non-discriminatory access on terms that fulfill all statutory and regulatory requirements. Statement § III & Attachs. A & D; Varner Aff. ¶¶ 81-84; Milner Aff. ¶¶ 35-36. Nine CLECs authorized to provide service in South Carolina have executed license agreements with BellSouth to attach facilities to BellSouth's poles and place

¹⁹ OSS access is being provided at no charge until the SCPSC establishes rates after its cost proceeding. See Varner Aff. ¶ 72. While the Statement does not include optional payment plans for non-recurring charges, BellSouth will consider CLECs' requests for such plans in negotiations. Id. ¶ 78.

facilities in BellSouth's ducts and conduits. Compliance Order at 40; Milner Aff. ¶ 35. In addition, BellSouth has provided cable television and power companies with access to poles, ducts, conduits and rights-of-way in South Carolina and throughout its region for many years. Milner Aff. ¶ 35. Such arrangements are "business as usual" for BellSouth. Id. ¶ 36.

(4) Unbundled Local Loops. Section 271(c)(2)(B)(iv) requires BellSouth to make available local loop transmission from the central office to the customer's premises unbundled from local switching or other services. As noted above, BellSouth's Statement makes local loop transmission available on an unbundled basis in compliance with section 51.319 of the Commission's rules. Statement § IV. Standard unbundled local loops available under the Statement include 2- and 4-wire voice-grade analog lines, 2-wire ISDN, 2-wire Asymmetrical Digital Subscriber Line ("ADSL"), 2-wire and 4-wire High-bit-rate Digital Subscriber Line ("HDSL"), and 4-wire DS-1 digital grade line. Varner Aff. ¶ 85; Statement § IV.A. Technical service descriptions of BellSouth's loop offerings are included in Exhibit WKM-9 to the Affidavit of Keith Milner. Additional loops types may be requested through the Bona Fide Request Process. Varner Aff. ¶ 86. In addition to loops themselves, CLECs are able to obtain loop distribution, loop cross connects, loop concentration, and use of the Network Interface Device ("NID") under the Statement. Statement § IV.B; Attach. C at 2; Varner Aff. ¶¶ 87-92; Milner Aff. ¶¶ 28-29. In response to a desire expressed by AT&T in state proceedings, BellSouth also offers two alternative ways of providing CLECs access to loops "behind" integrated digital loop carrier equipment, where the necessary facilities exist. Varner Aff. ¶¶ 93-

97. As explained in connection with checklist item (ii) above, the SCPSC has found that BellSouth's prices for local loops are in compliance with Section 252(d)(1). See also id. ¶ 86.

Local loops are available in practice to any CLEC that wishes to order them. Although CLECs in South Carolina have not taken BellSouth up on its offer, the SCPSC explained that "as of June 1, 1997, [BellSouth] had provisioned 2,654 unbundled loops to CLECs in its nine state region," Compliance Order at 42; that number had grown to 4,316 by August 1. Milner Aff.

¶ 37. BellSouth also has tested its ability to process orders and bill for various loops that the Statement makes available, ensuring that "generated orders for these items . . . flo[w]ed through the [BellSouth] system in a timely and accurate fashion." Compliance Order at 42; Milner Aff.

¶ 39. In actual practice, BellSouth has confirmed that at least 98 percent of the time it is able to cut-over loops to CLECs within 15 minutes. Milner Aff. ¶ 41.

(5) Unbundled Local Transport. Section 271(c)(2)(B)(v) of the Act requires BellSouth to offer local transport unbundled from switching or other services. BellSouth makes available dedicated and shared transport between end offices, between tandems, and between tandems and end offices. Statement § V.A; Varner Aff. ¶¶ 104-108; see Milner Aff. Ex. WKM-9 (technical service descriptions). CLECs have access to the same transport facilities that BellSouth uses to carry its own traffic, without any distinction between BellSouth's traffic and the CLEC's traffic. Varner Aff. ¶ 107. CLECs choosing shared transport have access to the routing tables in BellSouth's switches. Id.

BellSouth permits a requesting carrier to use shared transport to provide interstate exchange access to customers for whom the carrier provides local service. Varner Aff. ¶ 108. In